

Appl. No. 10/757,629
Atty. Docket No. 8194C
Amdt. dated December 6, 2005
Reply to Office Action of October 6, 2005
Customer No. 27752

REMARKS

Claims 1, 4-5, and 8-15 are pending in the present application. Claims 4 and 5 have been amended to more specifically characterize the present invention. No additional claims fee is believed to be due. Claims 1, 4-5 and 8-15 remain in the present application.

REQUEST TO WITHDRAW FINALITY OF OFFICE ACTION

The present Office Action states that Applicant's arguments in the previously filed Amendment were persuasive but rendered moot in view of new prior art. Furthermore, the present Office Action states that Applicant's amendments necessitated new grounds for rejection, and that the present Office Action is therefore made Final.

Applicant respectfully disputes that the previously-filed amendment necessitated new grounds for rejection. In that amendment, Applicant had amended claim 1 to change the "laterally outboard" and "laterally inboard" edges to --distal-- and --proximal-- edges, respectively. However, the present specification equates the "laterally outboard" and "laterally inboard" edges as being the same edges as the "distal" and "proximal" edges. For instance, Fig. 3 identifies edge x_a as a distal edge and edge x_b as a proximal edge (see Page 14, lines 25-26). In Fig. 4, the laterally outboard edge is identified as "C" while the laterally inboard edge is identified as "D". The position of the edges x_a and x_b are the same as edges C and D with respect to both the fastening element and the absorbent article. The amendment to claim 1 was merely to illustrate that the previously-issued Office Action of 05/03/05 identified the wrong edges in the cited prior art. Applicant, at the time, felt that changing the language would alleviate the confusion demonstrated in the Office Action regarding which edges were claimed. The amendment to claim 1 therefore did not substantively change the edges being claimed. Rather, the amendment was made for the purposes of clarification, and did not affect the scope of claim 1.

Because the previously-filed amendment to claim 1 did not necessitate new grounds for rejection, Applicant respectfully requests that the finality of the present Office Action be withdrawn.

Objection to the Drawings

The drawings are objected to because the 'lower and upper edges' recited in claims 4-5 are not shown in the drawings. Applicant has replaced the claim term 'lower

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and upper edges' with --longitudinally inboard-- and --longitudinally outboard-- respectively.

Rejection Under 35 USC §103(a) Over Schmidt in view of Vukos

The Office Action rejects claims 1, 4-5, and 8-10 under 35 U.S.C. 103(a) as being unpatentable over Schmidt in view of Vukos. In particular, the Office Action cites Schmidt at Col. 6, lines 63-68 and Fig. 3 as disclosing a backing tape used in a surface fastening system that is able to withstand different tear and tensile forces applied across the tape in varying directions and degrees when the user moves.

However, claim 1 does not recite a surface fastening system that is able to withstand different forces. Rather, claim 1 recites that the surface fastening system has different levels of resistance to disengagement in different directions (emphasis added).

The invention recited in claim 1 and the Schmidt disclosure are quite different. Schmidt states that surface fastening systems are subjected to varying forces while the wearer movement and, as a result, many common tape backings lacked suitable strength characteristics to withstand these use requirements. As a result, Schmidt continues, special attention must be given to providing higher tear and tensile properties. See Col. 2, lines 1-11. It is therefore a high tear and tensile property that enables Schmidt's surface fastening system to withstand the variable forces experienced during use, and not a fastening system having different levels of resistance to disengagement. In fact, Schmidt states that "the primary object" of the invention is to provide a unique, aggressively tacky pressure sensitive adhesive tape having desirable tear and tensile strength properties (col. 3, lines 4-7). Schmidt therefore discloses that tape bases having cross direction tensile strengths above 25 lbs./inch have adequate strength for use on diapers (col. 3, lines 45-48).

Applicant could not identify any teaching or suggestion within Schmidt to provide a surface fastening system having different levels of resistance to disengagement in different directions.

Vukos is cited for disclosing a disposable absorbent article having a surface fastening member that defines a Y-dimension that increases in a direction from a distal edge to a proximal edge.

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The Office Action states that one skilled in the art would be motivated to combine Vukos with Schmidt because Vukos would provide an easier mechanism to grip and open the tab. However, Schmidt already discloses a mechanism to facilitate opening of the disclosed surface fastening member. Namely, Schmidt discloses a protective cover strip 30 that is wider and longer than the adhesive tape 10 to provide a convenient handle for removal (see col. 7, lines 1-2; Fig. 2). Accordingly, the amount of projection of Vukos' distal edge would provide an advantage that is redundant with respect to the wider and longer dimensions of Schmidt's cover strip 30. Furthermore, Schmidt discloses no teaching or suggestion to use a non-rectangular surface fastening strip, and the reference is devoid of any motivation to incorporate the shape disclosed in Vukos.

Because no teaching or suggestion exists in either of the references to incorporate the teachings of Vukos in Schmidt, the combination of Schmidt and Vukos does not render claim 1 obvious.

Furthermore, even if Schmidt and Vukos were combined, the combination would fail to teach or suggest every element of claim 1. For instance, as discussed above, the combination of references would fail to teach or suggest that the surface fastening system has different levels of resistance to disengagement in different directions.

For at least these reasons, claim 1 is patentable over the cited prior art, and withdrawal of the rejection is respectfully requested. The patentability of claim 1 provides sufficient basis for the patentability of corresponding dependent claims 4-5. and 8-15.

With further respect to claims 4-5, Applicant notes that these claims have been amended to remove issues for appeal. Specifically, the claims were amended to remove the terms "lower edge" and "upper edge". These claim terms have been replaced by the language that was used when the present application was filed. Specifically, the terms "lower edge" and "upper edge" have been replaced by --longitudinally inboard edge-- and --longitudinally outboard edge-- respectively. The claim 4-5 terms "longitudinally outboard edge" and "longitudinally inboard edge" are clearly described in the present application. For instance, Fig. 3 clearly illustrates longitudinally outboard edge y_b and longitudinally inboard edge y_a (see Page 15, lines 4-5). Entry of these amendments is therefore respectfully requested.

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The Office Action rejects claim 4 over Schmidt and Vukos because Vukos' distal edge is said to be smaller than the proximal edge (see annotated Fig. 1 in Office Action). However, the distal edge and proximal edge are in longitudinal alignment, and can therefore not be equated with the presently claimed longitudinally outboard and inboard edges. Rather, the upper and lower edges in Vukos Fig. 1 are longitudinally outboard and inboard of each other. However, the upper and lower edges in Vukos have the same length and therefore do not teach or suggest the invention recited in claim 4.

For this additional reason, Applicant asserts that dependent claim 4 is patentable over the prior art.

Rejection Under 35 USC §103(a) Over Schmidt in view of Vukos

Claims 11-15 are rejected under 35 USC §103(a) as being unpatentable over Schmidt in view of Vukos, and further in view of Tritsch. Applicant asserts the patentability of independent claim 1 as providing sufficient basis for the allowability of dependent claims 11-15. Withdrawal of the rejection of claims 11-15 is therefore respectfully requested.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C. 102 and 103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of claims 1, 4-5 and 8-15 is respectfully requested.

Respectfully submitted,

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